

1 **BEFORE THE BOARD OF ENVIRONMENTAL REVIEW**
2 **OF THE STATE OF MONTANA**

3 In the matter of the adoption) **PRESIDING OFFICER REPORT**
4 of New Rule I pertaining to)
5 maintenance of air pollution)
6 control equipment for existing)
7 aluminum plants)

8 **INTRODUCTION**

9 1. On May 23, 2002, I presided over and conducted the
10 public hearing held in Room 35 of the Metcalf Building,
11 1520 East Sixth Avenue, Helena, Montana, to take public
12 comment on the above-captioned matter. Notice of the
13 hearing was contained in 2002 Montana Administrative
14 Register (MAR) No. 7, MAR Notice No. 17-160, published on
15 April 11, 2002. A copy of the notice is attached to this
16 report.

17 2. The hearing began at 10:30 a.m. and concluded at
18 11 a.m. A court reporter, Carol Hendrickson, recorded the
19 hearing.

20 3. I announced that persons at the hearing would be
21 given an opportunity to submit their data, views, or
22 arguments concerning the proposed action, either orally or
23 in writing. Written comments received at the hearing are
24 attached to this report. Also attached to this report are
25 written comments received during the public comment period.

26 4. At the hearing I identified and summarized the MAR
27 notice, stated that copies of the MAR notice were available

1 in the hearing room, read the Notice of Function of
2 Administrative Rule Review Committee as required by Mont.
3 Code Ann. § 2-4-302(7)(a), informed the persons at the
4 hearing of the rulemaking interested persons list and of the
5 opportunity to have their names placed on that list, recited
6 the authority to make the proposed rule, announced the
7 opportunity to present matters at the hearing or in writing,
8 as stated in the MAR notice, and explained the order of
9 presentation.

10 5. At the conclusion of the hearing, I announced that
11 the proposed rulemaking was expected to be considered by the
12 Board at its meeting on July 26, 2002.

13 **SUMMARY OF HEARING**

14 6. Jan Brown, Rule Development Specialist, Technical
15 Support Section, Air and Waste Management Bureau, DEQ, made
16 an oral statement. Ms. Brown explained that DEQ developed
17 the proposed new rule at the request of the Board. The
18 proposed rule would affect compliance with numerous air
19 quality rules. The proposed rule would affect the Columbia
20 Falls Aluminum Company (CFAC) at Columbia Falls, Montana.
21 In the past CFAC has applied to the Board for a variance so
22 that the plant could maintain air pollution control
23 equipment while continuing to operate the plant. Several
24 other states have rules allowing a temporary variance from
25 air quality rules, and the proposed new rule was based on a
26 similar rule from Oregon. The proposed rule includes
27 specific conditions on the maintenance similar to those

1 imposed on CFAC in the past under the formal variance
2 procedure.

3 Ms. Brown addressed some of the comments about the
4 proposed new rule that the United States Environmental
5 Protection Agency (EPA) had submitted in writing. EPA had
6 concerns about the modeling performed for CFAC to show that
7 the proposed maintenance procedures would not cause or
8 contribute to a violation of air quality standards for PM-10
9 emissions. Only emissions from the CFAC facility were
10 considered in the modeling analysis, because it was
11 determined that adding the background concentration of PM-10
12 emissions measured at the onsite PM-10 monitor adequately
13 represented emissions from other sources. The model was run
14 using meteorological data from the month of September for
15 three years, because the proposed rule limits the scheduled
16 maintenance to the month of September.

17 DEQ questions the need for the proposed new rule
18 because CFAC has had sufficient time to perform maintenance
19 of control equipment during the recent shutdown. If the
20 Board believes a rule is necessary, the DEQ believes the
21 proposed new rule would accomplish the Board's goals and
22 supports its adoption.

23 7. No other oral statements for or against the
24 proposed new rule were made at the public hearing.

25 **SUMMARY OF WRITTEN MATERIALS**

26 8. Jan Brown submitted a written statement
27 substantially the same as her oral statement.

1 9. David Rusoff, DEQ Deputy Chief Legal Counsel,
2 prepared a written review of HB 521, HB 311, and a Private
3 Property Assessment Act Checklist. With respect to HB 521,
4 no federal regulations or guidelines allow a primary
5 aluminum reduction plant to maintain air pollution control
6 equipment while operating. The proposed new rule would not
7 be more stringent than a comparable federal regulation or
8 guideline. Therefore, no further HB 521 analysis is
9 required.

10 With respect to HB 311 (the Private Property Assessment
11 Act), the State is required to assess the taking or damaging
12 implications of a proposed rule affecting private real
13 property. This rulemaking involves a rule affecting the use
14 of private real property. A Private Property Assessment Act
15 Checklist was prepared, which shows that the proposed rule
16 does not have taking or damaging implications. Therefore,
17 no further assessment is required.

18 10. The United States Environmental Protection Agency
19 (EPA) submitted written comments. In summary, EPA stated
20 that the proposed rule is not consistent with the federal
21 Clean Air Act (CAA) and EPA policy concerning emissions
22 during scheduled maintenance. The proposed rule may not be
23 consistent with federal regulation concerning emissions
24 standards for primary aluminum reduction plants. EPA also
25 has several concerns about the modeling analysis used to
26 support the proposed rule. Finally, EPA noted that an
27 existing rule, ARM 17.8.334, Emission Standards For Existing

1 Aluminum Plants—Startup and Shutdown, is not consistent with
2 the requirements of Section 110 of the CAA.

3 11. The Montana Environmental Information Center
4 (MEIC) submitted a written comment noting that CFAC was shut
5 down for more than a year during which CFAC performed
6 maintenance. Thus, further maintenance should be
7 unnecessary for many years. MEIC proposed an addition to
8 New Rule I(4) allowing the department to consider past
9 opportunities to maintain air pollution control equipment
10 when CFAC was shut down.

11 **PRESIDING OFFICER COMMENTS**

12 12. The Board has jurisdiction to adopt, amend, and
13 repeal rules for the administration, implementation, and
14 enforcement of the Clean Air Act of Montana. Mont. Code
15 Ann. § 75-2-111(1). The Board has specific authority to
16 issue rules establishing limitations of the levels,
17 concentrations, or quantities of emissions of various
18 pollutants. Mont. Code Ann. § 75-2-203.

19 13. House Bill 521 (1995), generally provides that the
20 Board may not adopt a rule that is more stringent than
21 comparable federal regulations or guidelines, unless the
22 Board makes written findings after public hearing and
23 comment. The proposed rule is not more stringent than a
24 comparable federal regulation or guideline. Therefore
25 written findings are not necessary.

26 14. House Bill 311 (1995), the Private Property
27 Assessment Act, codified as Mont. Code Ann. §§ 2-10-101

1 through -105, provides that a state agency must complete a
2 review and impact assessment prior to taking an action with
3 taking or damaging implications. The proposed rule affects
4 real property. A Private Property Assessment Act Checklist
5 was prepared in this matter. The proposed rule does not
6 have taking or damaging implications. Therefore, no further
7 HB 311 assessment is necessary.

8 15. The procedures required by the Montana
9 Administrative Procedure Act, including public notice,
10 hearing, and comment, have been followed.

11 16. The Board may adopt the proposed rule, or reject
12 it, or adopt the rule with revisions not exceeding the scope
13 of the public notice.

14 17. Under Mont. Code Ann. § 2-4-305(7), for any acts
15 in the rulemaking process to be valid, the Board must
16 publish a notice of adoption within six months of the date
17 the Board published the notice of proposed rulemaking in the
18 Montana Administrative Register, or by October 10, 2002.

19 Dated this _____ day of June, 2002.

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THOMAS G. BOWE
Presiding Officer
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